

### **REMARKS/ARGUMENTS**

The Official Action dated 25 July 2006 has been carefully considered, along with cited references, applicable sections of the Patent Act, Patent Rules, the Manual of Patent Examining Procedure and relevant decisional law.

As an initial matter, Applicant extends his gratitude for the Examiner's indication that this application contains patentable subject matter. In this regards, the Examiner has indicated that claims 6-10 are objected to as being dependent upon a rejected base claim, but would be allowable if written in independent form including all of the limitations of the base claim and any intervening claims. In light of the comments presented herein, Applicant has not rewritten these claims in independent form in the present amendment.

The disclosure is objected to because of the following informalities: On page 1 of the specification, the word 'pending' should be delted, and --now U.S. Patent 6,656,093-- should be inserted.

In response, the disclosure has been amended according to the Examiner's suggestion.

Claims 1-4 and 11-14 are rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 2 of U.S. Patent No. 6,656,093 and claim 15 is rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 3 of U.S. Patent No. 6,656,093. For double patenting to exist as between the rejected claims and patent claim 2 and 3 respectively,

it must be determined that the rejected claims are not patentably distinct from claims 2 and 3. In order to make this determination, it first must be determined whether there are any differences between the rejected claims and claims 2 and 3 and, if so, whether those differences render the claims patentably distinct.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.37(b).

In response, a terminal disclaimer in compliance with 37 CFR

1.321(c) or 1.321(d) is filed herewith to overcome an actual or provisional rejection based on a nonstatutory or obviousness-type double patenting.

Claims 1, 4-5, 11, and 14-15 are rejected under 35 U.S.C. § 102(b) as being anticipated by Fomichenko (SU 1618430).

In light of the comments presented herein, Applicant has amended claim 1. Claims 1-15 are pending in the present application. Applicant has not added additional claims, nor has Applicant cancelled claims in this Amendment. Accordingly, claims 1-15 remain pending.

In paragraph 2 of the Official Action, the Examiner has rejected claims 1-4 and 11-14 under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 2 of U.S. Patent No. 6,656,093 and claim 15 is rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over claim 3 of U.S. Patent No. 6,656,093.

Claims 2-15 ultimately depend from claim 1. As such, if claim 1 is shown to be different from the claim subject matters in claim 2 of U.S. Patent No. 6,656,093, claims 2-15 will necessarily overcome the rejection.

First of all, applicant would like to point out one thing that U.S. Patent No. 6,656,093 was the first product created and filed by the present applicant, in which in U.S. Patent No. 6,656,093, the latch (40) is slidably engaged in the conduit (34) of the rod (30), such that the strength of the rod (30) will be decreased. In addition, for slidably receiving the latch (40), the rod (30) is further required to have the conduit (34) deeply formed into the rod (30) in addition

to be formed in the end blocks (31), such that the strength of the rod (30) may further be decreased.

Unlike U.S. Patent No. 6,656,093, in Applicant's present invention, as shown in FIG. 3, the extension (43) is extended laterally from each of the two end portions (41) of the rod or handle (40), and the cylindrical or tubular latch (47) is slidably engaged onto and around the outer portion of the first end (41) or the extension (43) of the handle (40) such that the handle (40) is not required to form a conduit for slidably receiving the latch (47) and such that the strength of the handle (40) will not be decreased. In addition, the latch (47) is slidably engaged onto the extension (43) of the handle (40) such that the latch (47) may be guided to smoothly move along the extension (43) of the handle (40).

U.S. Patent No. 6,656,093 failed to disclose a tubular latch (47) slidably engaged onto an extension (43) of a handle (40) and slidably engageable into the channels (34) of a selected number of the weights (31) respectively, such that the present invention is different from U.S. Patent No. 6,656,093.

In paragraph 4 of the Official Action, the Examiner has rejected claims 1, 4-5, 11 and 14-15 under 35 U.S.C. § 102(b) as being anticipated by Fomichenko (SU 1618430).

Claims 2-15 ultimately depend from claim 1. As such, if claim 1 is shown to be different from Fomichenko (SU 1618430), claims 2-15 will necessarily overcome the rejection.

Among other features also found in claim 1, the Examiner contends that Fomichenko discloses an adjustable dumbbell assembly comprising a handle (1) inherently including a first end,

a plurality of weights (18) each including a channel formed therein to slidably and selectively receive the first end of the handle, a latch (2, 3) slidably engageable into the channels of a selected number of the weights respectively, and ....

Notwithstanding the Examiner's position, it does not appear that Fomichenko fully discloses each of the elements of claim 1. Similar to U.S. Patent No. 6,656,093, in Fomichenko, the handle (1) is hollow for receiving the fingers (2, 3 and 4, 5), such that the strength of the hollow handle (1) will also be decreased. In addition, the fingers (2, 3 and 4, 5) are inserted from both sides of the hollow handle (1) and may not be seen by the users, and may be engaged with or interfered each other and may not be easily engaged with one another when they are moved, such that the fingers (2, 3 and 4, 5) may not be easily moved and operated by the users.

Unlike Fomichenko (SU 1618430), in Applicant's present invention, as amended in the amended claims 1-15 and as shown in FIG. 3, the extension (43) is extended laterally from each of the two end portions (41) of the rod or handle (40), and the cylindrical or tubular latch (47) is slidably engaged onto and around the outer portion of the first end (41) or the extension (43) of the handle (40) such that the handle (40) is not required to form a conduit for slidably receiving the latch (47) and such that the strength of the handle (40) will not be decreased. In addition, the latch (47) is slidably engaged onto the extension (43) of the handle (40) such that the tubular latch (47) may be seen by the users and may be easily moved and operated by the users, and the latch (47) may be

guided to smoothly move along the extension (43) of the handle (40).

Similarly, Fomichenko also failed to disclose a tubular latch (47) slidably engaged onto an outer portion of an extension (43) of a handle (40) and slidably engageable into the channels (34) of a selected number of the weights (31) respectively, such that the present invention is different from Fomichenko. The applicant's invention is different from that of the cited arts and has improved over the cited arts.

In view of the foregoing amendments and remarks, applicant respectfully submits that the present invention is patentably distinguishable over the cited arts and that the application is now in condition for allowance, and such action is earnestly solicited.

Courtesy and cooperation of Examiner MATHEW are appreciated.

Respectfully submitted,

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